

ZONING MEMBERS PRESENT:

Linus Kafka, Zoning Examiner
Glenn Moyer, Planning & Development Services
Carolina Almeraz, City Recording Clerk

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1 ZONING EXAMINER: Next case on the agenda this evening
2 is Case No. SE-12-94. AT&T - Presidio Road. Mr. Moyer.

3 MR. MOYER: Mr. Kafka, as in the previous one, the only
4 update I have is to the approval/protest figures. As of today,
5 Planning & Development Services Department has received a total
6 of five approvals and a total of 13 protests. The five approvals
7 are from owners, and the 13 protests are from owners as well.

8 I have an additional comment in that we've received 11
9 protests from parents of Tucson Waldorf School and seven unsigned
10 e-mails of approval.

11 ZONING EXAMINER: Thank you. I, I have those. I also
12 have other submissions that were made part of the record,
13 including a lightning report. Guess that's what it was titled.
14 A letter from - actually, I think this was already part of the
15 record. A letter from the Electromagnetic Safety Alliance.

16 And as a preliminary note, if, if you have, on this
17 case, a letter that you want to read into the record from
18 somebody who couldn't appear, I'd prefer that you just submit it
19 into the record. We have copies of many letters on this, and I'd
20 prefer to, to get people's testimony rather than have letters
21 read into the record, that I can put into the record.

1 All right. Call the Applicant's representative up. I
2 think there's been a change in personnel on that?

3 MR. LAKE: Mr. Kafka, my name is Greg Lake, attorney
4 representing AT&T, and I'll be tag-teaming this tonight with Mr.
5 Burmer. I apologize. I'm the best kind of lawyer you're gonna
6 like, a lawyer with laryngitis. So if you can't hear me, I'll
7 try to be a little more articulate.

8 ZONING EXAMINER: All right. Thank you.

9 MR. BURMER: Good evening, Zoning Examiner. Tim
10 Burmer, FM Group, Inc., representing the Applicant.

11 ZONING EXAMINER: All right. So last time we were
12 here, I had requested a few things: To revisit information on
13 property values, some aesthetic concerns, noise concerns, I think
14 the lightning issue. And we'll revisit those issues and, and if
15 anything else comes up as well. So if you're prepared to speak
16 to those.

17 MR. LAKE: That, that is correct. And I think this was
18 a topic of a e-mail that I exchanged with the City Attorney
19 earlier this week. I think you may perhaps got a - received a
20 copy of that.

21 I believe at the last zoning hearing, many of the
22 residents in the area expressed some concerns regarding
23 lightning, health insurance, various other issues. And I'm sure
24 they're valid and concerned - large concerns in their own mind.

1 However, based on the Telecommunications Act of 1996,
2 and subsequent federal law, which I believe you're aware of, our
3 purpose here tonight is really two things. Number one, we need
4 to determine whether or not AT&T has a gap in coverage. And,
5 number two, is this the least intrusive means to fill that gap?

6 And as part of determining whether it's the least
7 intrusive means, do we comply with the City ordinance in getting
8 that done? So AT&T made the decision, let's focus on those
9 issues as opposed to trying to figure out issues regarding health
10 insurance rates or lightning strikes.

11 ZONING EXAMINER: Well, I do want to address those
12 issues, and I agree with you, those two are the broad issues that
13 need to be addressed in terms of compliance with the, the Act.
14 But in terms of local decision-making about land use concerns, I
15 think anything involving the concerns that are articulated, other
16 than the environmental effects, health effects, I'd still like to
17 see addressed. Certainly wrapped into least-intensive (sic)
18 would be, I believe, issues of aesthetics and whether the design
19 is minimally intrusive, that kind of thing.

20 MR. LAKE: Happy to discuss those things (inaudible)

21 ZONING EXAMINER: Okay. All right. Well, let's, let's
22 start.

23 MR. LAKE: Okay. Do you wish - do you want to listen
24 to the presentation from Planning Staff, or do you want us to

1 address why we believe this is the least intrusive means of
2 filling this gap?

3 ZONING EXAMINER: Let's start there. I'd like
4 presentation from you, or either of you -

5 MR. LAKE: Go ahead.

6 ZONING EXAMINER: - on that issue. Walk me through
7 that.

8 MR. BURMER: Okay. As was presented at the previous
9 hearing, the makeup of the search ring, if you will, which is the
10 area that we are given to find a solution to address the coverage
11 gap, my very intensive review of the existing properties is
12 undertaken. And of course, the first goal is always to co-locate
13 on existing verticality, 'cause that, by definition, would be the
14 least obtrusive solution.

15 In terms of existing wireless antenna sites, there are
16 none within the ring. It's a fairly small ring. It's only about
17 a half mile in diameter. One candidate was proposed on existing
18 Crown Castle antenna site that's to the north of the ring off
19 Prince Road.

20 The network engineers reviewed that candidate for
21 acceptability and determined that it did not address the specific
22 coverage gap that we're trying to, to correct.

23 The second co-location opportunity is always Tucson
24 Electric power poles that would actually end up being replaced.

1 And our antennas would, would be mounted above the conductors.
2 There are existing TEP power poles that run along Fort Lowell
3 that are obviously within the search area, but the, the, the
4 issue that comes up with co-location on a power pole is twofold.

5 One, the, the owner of the power pole, TEP, has to
6 approve the specific pole for co-location. And that is
7 complicated even further by having to have adequate ground space
8 near the base of the pole for the ground-mounted equipment.

9 In evaluating all of the TEP power poles that existed
10 along Fort Lowell, none were found that met both of the criteria,
11 acceptable to TEP and adequate ground space for the ground
12 equipment.

13 Once those candidates are ruled out, then you start
14 intensively looking at each individual property that's within the
15 search ring. The search ring is largely, largely residential.
16 There are some commercial buffer areas that run along both sides
17 of Fort Lowell, as long - as well as on the east and west sides
18 of Country Club.

19 But when you start analyzing the properties, which
20 (inaudible) discovers, every single one of the commercial or
21 office opportunities also is adjacent to, to a residential-zoned
22 property or a residentially-used property, i.e., in the
23 commercial areas there's a lot of apartment buildings that are
24 not zoned residential, but are, in fact, a residential use.

1 Although we would go to an apartment complex, we have
2 done sites in apartment complexes, your ordinance allows it to
3 occur in an apartment complex, we choose not to go there if we
4 have what we would consider to be less obtrusive solutions.

5 That being said, within the entire search ring, there's
6 two significantly large parcels. Let me rephrase that. There's
7 two relatively large pieces of property owned by the same entity
8 that in both cases, the church and the other property I'm
9 speaking of, there's multiple parcels that comprise the property.

10 The church allows us to achieve the greatest separation
11 between residential, adjacent residential, and the south side of
12 the other properties considered. That, combined with the fact
13 that we are proposing a stealth solution - or disguise solution,
14 it is our opinion that the church is, in fact, the least
15 obtrusive solution to the problem.

16 ZONING EXAMINER: Let me interrupt you there for just a
17 moment. I know we're - what we're getting to here is the -
18 whether we are addressing the least intrusive means to achieving
19 the end.

20 In the design compatibility report that I have, there's
21 a summary statement that there were no other possible properties.
22 But I don't have any underlying statement from engineers
23 detailing what properties were considered. Do you have that
24 information?

1 MR. LAKE: Mr. Kafka, in anticipation of that question,
2 we have our radio frequency - we refer to him as our RF engineer,
3 Ozgur, who is here who can address the questions with regard to
4 situation of the, the location of the particular site to meet the
5 radio frequency requirements.

6 ZONING EXAMINER: Okay. Thank you.

7 MR. BURMER: And I can submit this as a, as a, as a
8 piece of the record. I have an 11 by 17 copy of it.

9 ZONING EXAMINER: That would be, that would be more
10 convenient.

11 MR. BURMER: The, the, the property - here's the
12 church, okay? This is where we're located at the church. This
13 commercial center on the intersection of Fort Lowell and Campbell
14 was also a candidate. And in fact, the landlord would have
15 allowed us to go there. It does offer a very nominal -

16 ZONING EXAMINER: Let me interrupt you for a second. I
17 don't think we have a laser pointer available. But if you could
18 just angle slightly and maybe - so I can see it, and then also
19 for the convenience of people who might want to see this. I can
20 see it from that angle.

21 MALE SPEAKER: (Inaudible) portable mike?

22 ZONING EXAMINER: Yeah, let's do that. Mr. Burmer, I'm
23 gonna hook up the portable microphone, and then you can stand
24 back here and point those out if that's okay.

1 MR. BURMER: Testing. It works.

2 ZONING EXAMINER: Thank you.

3 MR. BURMER: Okay. The only, the only two candidates,
4 when we canvassed the entire search ring that fit the key
5 criteria - one, we have to have a willing landlord. It has to
6 work for the network engineers to address the coverage gap. And
7 it needs to comply with the City of Tucson ordinance. And on top
8 of that, it needs to be the least obtrusive.

9 Okay. The, the properties that I was talking about
10 within the search ring that are large enough to be looked at in
11 the least obtrusive selection category are the ones labeled one,
12 two, three and four, okay?

13 The only two that fit all four of the criteria are one
14 and two. For number - I'm sorry. Number one and four. For
15 number two, we made repeated efforts to talk to the landlord to
16 see if he was interested in negotiating a lease.

17 ZONING EXAMINER: Which, which is the property that's
18 number two? Okay.

19 MR. BURMER: But that landlord never demonstrated a, a
20 willingness to enter into a lease. And even had he had, it's
21 still not a, it's still not less obtrusive than the church
22 candidate. The reason being is, no matter where on that property
23 you were to place the site, it would actually be closer to
24 adjacent residential than the site currently proposed at the

1 church.

2 ZONING EXAMINER: Do you know the address of that site?
3 It's on Fort Lowell, I gather. (Inaudible)

4 MR. BURMER: I can - I've got it in my, in my notes.
5 And the same thing's true with number three. No matter where you
6 put the site on the - number three, with the exception of the
7 frontage on Fort Lowell, which commercial property owners don't
8 allow you to put sites on their frontage to the major streets.
9 That's, you know, that's the view that they're most concerned
10 with.

11 ZONING EXAMINER: And, and which is three? Is that
12 Christie's?

13 MR. LAKE: Christie's Appliances.

14 MR. BURMER: Christie's Appliances, yeah. So, you
15 know, long story short, after canvassing all the properties, we
16 had two willing landlords that met the criteria. You could argue
17 that number four has, has a, a nominal better setback from
18 adjacent residential than number one.

19 The problem with number four is, there was considerable
20 constructibility (sic) concerns because it is a very - it's a -
21 you have to maintain the, the drive with requirements by code.
22 And it's a very tight area to try to fit a site.

23 And quite honestly, even if we had gone there, I don't
24 think it would have changed the opposition to the site, 'cause it

1 would only be about 20 feet away from where it currently is.

2 ZONING EXAMINER: And that, that's site four.

3 MR. BURMER: Correct.

4 ZONING EXAMINER: That's adjacent to the church
5 property?

6 MR. BURMER: Yeah.

7 ZONING EXAMINER: On the commercial property.

8 MR. BURMER: We're number one right below it.

9 ZONING EXAMINER: Okay.

10 MR. BURMER: There's number four.

11 ZONING EXAMINER: Thank you.

12 MR. BURMER: And that's got, that's got the addresses
13 of all four of the subject properties.

14 ZONING EXAMINER: All right. Mr. Burmer's provided me
15 with the alternate site analysis which details the facts that you
16 just spoke to.

17 MR. BURMER: Basically what I just discussed is a
18 summary of what's in that report.

19 ZONING EXAMINER: All right. Thank you. Is the radio
20 frequency engineer available? Okay.

21 MR. CELIK: Would you like me to address - what part
22 would you like me to - I'm sorry. My name is Ozgur Celik. I'm
23 one of the radio engineers at AT&T.

24 ZONING EXAMINER: Sure. Thank you. If you could just

1 - now I think we're gonna, and Mr. Burmer has -

2 MR. BURMER: On the, on the easel.

3 ZONING EXAMINER: - has - thank you.

4 MR. BURMER: (Inaudible)

5 ZONING EXAMINER: Mr. Burmer's anticipated my question
6 here, and that is the coverage area.

7 MR. BURMER: So -

8 ZONING EXAMINER: I want to note, though, in my file -

9 MR. BURMER: Uh-huh.

10 ZONING EXAMINER: - you're gonna have to supplement the
11 record, because both of those sheets are marked "coverage with
12 the tower" in my file.

13 MR. BURMER: Okay.

14 ZONING EXAMINER: So I, when I was looking at that,
15 excuse me, coverage, they both say "coverage without". I don't
16 know what they say on the exhibit there. It says coverage -

17 MR. CELIK: This one says "with".

18 ZONING EXAMINER: Okay.

19 MR. CELIK: So the bottom would be with the tower. And
20 mainly we're trying to target these yellow areas in the before
21 picture. And it may be a little hard to see, but these other
22 dots, the brown dots you can see surrounding are the neighbor
23 sites planned or on air. Most of them are on air.

24 And we're trying to cover the yellow areas. And as you

1 can see in the after picture, the dot is a little further west of
2 our ideal location compared to the center of the one that Mr.
3 Burmer just showed you. And you can see a consequence of that,
4 too. Once you move a little west, even though it's a slight
5 move, you start having yellow areas left out on the east side.

6 So that's, that's a good example of in a typical
7 suburban area, you know, how little room you have to move. And
8 once you move from your ideal spot, you start to overlap with
9 some neighbor sites too much, and you start to overlap not enough
10 with, you know, the opposite side.

11 ZONING EXAMINER: Let me ask you what, what does yellow
12 actually represent in terms of coverage?

13 MR. CELIK: That, that, that is a signal strength
14 threshold, but in practice, you can think of it as very low data
15 speeds. Not necessarily voice problems, but low data speeds.

16 ZONING EXAMINER: So marginally adequate? Inadequate?

17 MR. CELIK: I would classify it as inadequate in
18 today's standards, yes.

19 ZONING EXAMINER: And is the tower at Campbell and Fort
20 Lowell included in there?

21 MR. CELIK: This one here?

22 ZONING EXAMINER: Yeah.

23 MR. CELIK: Yes, it is.

24 ZONING EXAMINER: C-669?

1 MR. CELIK: It's assumed that it's on even though it's
2 not built yet.

3 ZONING EXAMINER: Okay. So that's - this is all
4 speculative based on -

5 MR. CELIK: Well, which will be the worst case meaning
6 even if we supply everything else around it, we still have a
7 hole.

8 ZONING EXAMINER: Okay. So if yellow is inadequate,
9 what is red? And it -

10 MR. CELIK: You can think of it as no data service
11 speeds.

12 ZONING EXAMINER: No, no service whatsoever.

13 MR. CELIK: Yeah.

14 ZONING EXAMINER: And that, that - is it negative 105
15 decibel milliwatts?

16 MR. CELIK: Yes.

17 ZONING EXAMINER: Okay.

18 MR. CELIK: 105 to 95, yeah, negative. Yeah.

19 ZONING EXAMINER: All right.

20 MR. CELIK: And I'd like to quickly add our main
21 business is data service nowadays, a lot more than voice service.

22 ZONING EXAMINER: So emphasizing that the yellow would
23 be inadequate data service, but not -

24 MR. CELIK: Yes.

1 ZONING EXAMINER: - necessarily inadequate voice
2 service.

3 MR. CELIK: That's right.

4 ZONING EXAMINER: Okay. And did you get a chance -
5 were, were you - did you participate in the review of the site
6 analysis for alternate sites?

7 MR. CELIK: Yes, sir. We, we initially defined the,
8 the search ring, the circle that was marked, that was given to
9 real estate. And we analyze the candidates inside whatever is
10 available to us. And we also sometimes (inaudible) what's
11 outside also just, just to make sure.

12 ZONING EXAMINER: Do you include in your analysis
13 models for different heights?

14 MR. CELIK: Yes. The software's input is the location,
15 the height, the antenna models and the orientations of the
16 antennas and the tilts of the antennas. And we do use different
17 prediction models based on whether an area is rural, suburban or
18 we, we also have different models for different height ranges.

19 ZONING EXAMINER: And can you tell me when at what
20 height this map would change significantly to inadequate levels?

21 MR. CELIK: For, for, for an area like this, once, once
22 we start going below the 50-foot range, it, it rapidly, it
23 rapidly shrinks. In the opposite direction, when you go to 60,
24 70, 80 feet, it's a gradual increase.

1 ZONING EXAMINER: So it's possible to achieve similar
2 coverage at about 50?

3 MR. CELIK: It's, it's, it's, again, it's a quality
4 issue. And as I said, we already lose some on the east side.
5 It will be just a larger hole.

6 ZONING EXAMINER: Okay. All right. Thank you.

7 MR. CELIK: Thank you.

8 ZONING EXAMINER: Mr. Burmer?

9 MR. BURMER: Which translates into the need for
10 additional towers. The other, the other -

11 ZONING EXAMINER: But they'd just be shorter towers.

12 MR. BURMER: Yeah.

13 ZONING EXAMINER: Okay.

14 MR. BURMER: But even - and, Ozgur, you might want to
15 stay up for this, but even with a greater number of shorter
16 towers, you're still not getting the quality of service that you
17 would get with fewer taller towers, to a degree.

18 ZONING EXAMINER: Yeah.

19 MR. BURMER: And the reason for that is, is the angle
20 that the radio frequency is coming from the tower. The lower you
21 get, the more likely it is to be obscured by the, the surrounding
22 environment, the trees and bounces across rooftops and things of
23 that nature.

24 The other thing I just want to make - the site, the

1 engineers initially wanted 70 feet. That was their want.

2 ZONING EXAMINER: All right. One of the things I'd
3 asked for last time was some analysis of impact on property
4 values. And I'm not sure - were you able to get anything on
5 that?

6 MR. LAKE: Mr. Kafka, no. We're not doing any impact
7 on property values.

8 ZONING EXAMINER: All right. Another question. I
9 received a noise report, and notice that the additional noise
10 would be below the threshold for the noise ordinance.

11 MR. BURMER: Significantly.

12 ZONING EXAMINER: Any - can you address the issue of
13 aggregate noise? That is, adding noise even if it's below the
14 threshold to existing ambient noise.

15 MR. BURMER: I'm not an expert on noise. We'd have to
16 have the person who did the, the study to, to address that
17 concern. But I think one thing that needs to be recognized is,
18 yes, it's got two five-ton air conditioners. But they never run
19 simultaneously. The reason for the two is redundancy.

20 The other issue is, is that to the east of the site
21 there are a number of structures on the church property that are
22 between the site itself, the shelter and the air conditioners,
23 and the closest residential - the, the closest residence in that
24 direction, there's three storage buildings between us and them,

1 and then there's a large picnic ramada that has a large CMU wall
2 between those residences and the site itself. So all of those
3 things help to buffer the amount of noise that actually is able
4 to, to reach that, that position.

5 ZONING EXAMINER: Would a CMU wall around the shelter
6 also buffer that noise?

7 MR. BURMER: A CMU wall around the shelter would, and
8 AT&T would have no objection to having a CMU wall. The chainlink
9 fence was at the request of the City of Tucson because of
10 concerns over graffiti.

11 ZONING EXAMINER: Yeah. And would a, would a 50-foot
12 tower require two five-ton?

13 MR. BURMER: Yes.

14 ZONING EXAMINER: Okay.

15 MR. BURMER: Yeah. It's a factor of the radio
16 equipment in the shelter, and not part of the tower.

17 ZONING EXAMINER: Did you get a - I, I know, Mr. Lake,
18 that you wanted to avoid discussing the lightning report. I only
19 got it on the 14th, so I haven't even been able to review it
20 completely. Do you have any words and comment on that?

21 MR. LAKE: I've not received or reviewed the lightning
22 report.

23 ZONING EXAMINER: Okay.

24 MR. LAKE: Just if I may add, on the issue of, I know

1 you're - from the discussion, it sounds like you're considering
2 possibly a condition of reducing the height of the tower. Let me
3 address - that's a possibility. I can hear it in what's going
4 on.

5 One thing we need to consider, however, is - and this
6 is a question for you as well as all of us, and that is, what is
7 - what causes more of the visual impact? Reducing one tower from
8 65 feet down to 50 feet, or creating two towers, both at 50 feet?

9 I would submit that one tower, at - adding ten more
10 feet to a tower creates a lesser impact, and you have one less
11 community that you're gonna - one less residential area that
12 you're gonna have to provide any impact to at all.

13 ZONING EXAMINER: Well, that is food for thought. I'm,
14 I'm - but I'm gonna examine each case discreetly, you know.

15 MR. LAKE: Absolutely. I understand.

16 ZONING EXAMINER: Perhaps the engineer - I apologize.
17 I, I don't remember your name.

18 MR. CELIK: My name is Ozgur.

19 ZONING EXAMINER: Ozgur. If you could address the
20 issue of the location of the tower on the site itself and whether
21 this is the least intrusive location on the site.

22 MR. CELIK: I, I believe that will be addressed by Mr.
23 Burmer because -

24 ZONING EXAMINER: Okay.

1 MR. CELIK: - within the property itself that, that
2 move would be negligible for us, a few hundred feet.

3 ZONING EXAMINER: Okay. Mr. Burmer, do you -

4 MR. BURMER: I, I think clearly if the site were moved
5 to the west, thus maximizing the distance from the residential to
6 the east, that that clearly would be less obtrusive than where it
7 is now. Not, not to the properties to the south, but clearly to
8 the properties to the east.

9 The - but then it gets back to the willing landlord
10 issue. It is on the site where it is because that's where the
11 church wanted us to put it. And it, and it - and I understand.
12 It makes sense because there is a jog in the wall there, on the
13 north wall, which creates the area.

14 There's also the existing storage buildings that the
15 church has on the property, so the, the site itself blends into
16 what's already there as opposed to standing alone by itself at
17 some other location on the property.

18 I, I can't - that's where they wanted us to go. I
19 can't say, I can't speak to whether they'd allow us to move it
20 somewhere else on the property.

21 ZONING EXAMINER: Okay. Thank you. Just for
22 clarification, and either you can speak to this or Ozgur can
23 speak to this. The, the necessary coverage as you're defining it
24 is about how you measure actual service, not a market desire.

1 That is when you talk about your objectives in coverage, the
2 objective isn't the most you could possibly get. It's - the
3 objective is to meet necessary minimum standard of service. Am I
4 correct in that?

5 MR. BURMER: I think we probably both are going to
6 address this, but all carriers have a FCC license requirement to
7 provide equal coverage for the entire city of Tucson, for
8 example. So they, they, they can't pick and choose where they
9 have good coverage and where they have bad coverage.

10 They have a license obligation to provide equal
11 coverage, and that's what's really driving filling these coverage
12 gaps in the networks today is fulfilling that requirement to
13 provide equal coverage.

14 And it's really not even predicated on whether AT&T has
15 customer demand in that area. It's still a gap. And as we know,
16 we're all transient anyway and we're most, you know, we're, we're
17 usually in transit somewhere where we need the coverage and, and,
18 you know, it's not always just being in your home or office. Do
19 you want to address from a -

20 MR. CELIK: (Inaudible) a little bit more?

21 ZONING EXAMINER: And let me just be maybe a little bit
22 more clear. In the, in the inventory analysis, the statement
23 covers AT&T's coverage objectives. And I'm trying to parse out
24 whether the coverage objectives are the same as the - as closing

1 the gap at a minimum level of service, or whether AT&T is
2 providing more than they need as an objective.

3 MR. CELIK: Maybe I, I, I will try to quantify it by
4 saying that to, to be able to compete with a, let's say, a cable
5 provider, yes, the, the coverage is inadequate to supply usable
6 speeds with today's standards where there's a lot of demand.

7 And I have read, you know, about 20,000% increase in
8 data demand for our company. So we're definitely in catch-up
9 mode. And we definitely pick the worst case areas to try to
10 allocate our budget properly, the limited budget. So, yeah, as a
11 result, I would, I would definitely say for data purposes, we,
12 we, we are not, we're not usable in that area.

13 ZONING EXAMINER: And the tower proposals are meant to
14 close the coverage gap itself, and perhaps Mr. Lake or Mr. Burner
15 can help me with the standard. The coverage gap is to be closed
16 in the least intrusive means, not just the physical presence of
17 the tower.

18 MR. LAKE: Mr. Kafka, yes, that is correct.

19 ZONING EXAMINER: Okay.

20 MR. LAKE: We are to fill the gap using the least
21 intrusive means to fill that gap.

22 ZONING EXAMINER: All right. Is there anything else
23 that you'd like to add?

24 MR. LAKE: No.

1 ZONING EXAMINER: Anybody else wishing to speak in
2 favor of the Applicant's proposal?

3 MR. MOYER: Mr. Kafka, I have a letter that was given
4 to me shortly before the hearing tonight. I just want to make it
5 part of the record. It's from a Frances Garcia, at 3438 East
6 Presidio Road.

7 ZONING EXAMINER: Thank you, Mr. Moyer.

8 MR. BRADY: Mr. Kafka, my name is John Brady. I'm the
9 Chairman of the Finance Committee at St. Frances Cabrini. I'm
10 also a member of the Parish Council at the church, and I'm here
11 mostly to answer any questions you might have, but also to
12 address two small issues that have, that came up through the
13 Staff report and through the, through the petition that were
14 submitted that I want to point out to you, and then to answer any
15 questions you have.

16 First is the Staff report has indicated that a five-
17 foot landscape buffer should be placed around this site on the
18 east and south sides. And that is totally unnecessary. You
19 would not be able to see this site from the east. The church has
20 some storage buildings at that location, and it would totally
21 block any view from that.

22 From the south, we also - the only way to see that from
23 off the church property is looking down the driveway, which
24 already has a fence - the church has a fence that blocks that.

1 So, again, that landscape buffer is totally unnecessary. I
2 appreciate the Staff's concerns about, about that, but I don't
3 believe it's necessary. That's also separate and apart from the
4 concept of whether a CMU wall would obviate that as well. I
5 presume it would be if that were the requirements that were
6 imposed.

7 The other aspect of things I want to bring up is the
8 requirement for the three palm trees and the perpetual main- --
9 maintenance of those trees. That's not something that the
10 replanting of those in the event of their death should be - not
11 something that should be on the church but should be on AT&T.
12 That's something obviously that we can negotiate with AT&T. But
13 if it were a condition -

14 MALE SPEAKER: Excuse me. Please speak up, please.

15 FEMALE SPEAKER: We can't hear you.

16 MR. BRADY: I'm sorry. I thought I was speaking into
17 the mike. I apologize.

18 ZONING EXAMINER: Yeah. Perhaps -

19 MR. BRADY: Would it be better if I speak into this
20 mike?

21 MALE SPEAKER: Yeah.

22 ZONING EXAMINER: And that's a better microphone, yes.
23 Thank you.

24 MR. BRADY: Do I need to repeat what I said earlier,

1 Mr. Kafka, or did you -

2 ZONING EXAMINER: I, I got it, but in brief -

3 MR. BRADY: My, my summary was that I do not believe
4 that the landscaping buffer on the south and east of the site is
5 necessary in that the site is not visible from, from off of the
6 church property. And, therefore, that buffer, landscaping buffer
7 is not, not needed and that (inaudible) without regard to whether
8 there's a CMU wall required or not. That's not what's proposed,
9 that was not a requirement of the church that that be there.

10 The second, second aspect that I wanted to address was
11 the requirement of the City that there be three palm trees
12 planted to visually break up the appearance of this, and that
13 those be maintained in perpetuity. And my point was I don't
14 believe that's an obligation that should fall on the property
15 owner, but rather on AT&T, and would prefer to see that as part
16 of, part of your report.

17 Other than that, Mr. Kafka, the (inaudible) things
18 you've mentioned a minute ago about the location of this site
19 within the church property, clearly our preference is to have it
20 where the proposed siting is. If that is not acceptable, we, we
21 would discuss with AT&T other alternatives.

22 But that's our preferred site. That's what fits best
23 within our property in terms of other uses of the property that
24 already exist and would be frankly the least obtrusive on our, on

1 our end as well. So unless you have questions, I'm here.
2 Obviously, the church is in support of the, of the application.
3 But other than that, I have nothing to add.

4 ZONING EXAMINER: Thank you. Is there anybody else
5 wishing to speak in favor of the application? All right.

6 Mr. Brady did it without me asking him, but what I'd to
7 do is do the same thing I did at that last hearing, and that is
8 ask people to speak for about - limit their speaking to about
9 three, four minutes because it appears we have a lot of people,
10 and we have a lot of cases on the agenda this evening. So I'd
11 like to give people an opportunity to speak, but also have an
12 opportunity for everyone to speak who wants to speak.

13 All right. So with that, is there anybody who wishes
14 to speak in opposition to the application by a show of hands.
15 Raise them high so I can see them. Okay. Keep them up. I'll
16 start, I'll start with you, sir. I'll start on the far end
17 there. And if, I'll remind you to speak your name into the
18 microphone and please sign in.

19 At this time, I'll also remind people, I'll make the
20 same caveat warning that I made at the earlier hearing and that I
21 alluded to with my conversation with Mr., Mr. Lake. I cannot
22 use testimony regarding the environmental effects of EF and RF
23 emissions or just RF emissions in making my recommendation. So I
24 cannot use that information.

1 Last hearing, I did not prevent anybody from speaking
2 about that issue because I believe that I can parse what is
3 relevant from what is irrelevant. And I do want to give people
4 an opportunity to address their concerns because this is a
5 legislative proceeding. It is a public proceeding. And if
6 people have concerns, I want them to be able to express them.

7 But I, as the Hearing Officer, will make the
8 determination that there's information I cannot use. And
9 anything regarding the environmental effects of RF emission I
10 cannot use. And I think Mr. Lake would remind me of that.

11 MR. FOSSDAL: Yeah. Good, good afternoon, good
12 evening. I'm David Fossdal. I'm a resident at 3007 North Cardi
13 Avenue. I represent myself. I'm not part of the Neighbors For
14 Safer Wireless Technology, but I am a concerned neighbor. And I
15 do not represent the Cabrini Neighborhood Association. I want to
16 make that perfectly clear to everybody in the room, and make it
17 part of the record.

18 The - AT&T decided that they didn't want to talk about
19 property values. I happened to talk to a few realtors and was
20 made aware that cell towers such as this that are as high as they
21 are really detract from potential buyers. People that are
22 looking to buy homes, it's three words: location, location,
23 location.

24 And they look for types of schools, the shopping that's

1 available, the places of worship, whether there's graffiti in the
2 neighborhood, conditions of the homes in the area, and also the
3 type of businesses such as bars and porn shops and pool halls.
4 They also look at street conditions and zoning for other than
5 single-family homes, such as mini-dorms.

6 We feel that, or I feel that a 65-foot tower in that
7 area diminishes the home buyer pool. And that concerns me for
8 when and if I ever try to sell my property. A gentleman just
9 previous to me had mentioned that there's some storage buildings
10 to the east and some fencing. Well, that doesn't hide a 65-foot
11 tower. Those buildings are not that tall. As a matter of fact,
12 I was part of building those buildings about ten years ago. And
13 at the highest point, they're probably 12 feet.

14 When they say most in- -- most, or the least intrusive,
15 that is very subjective. There's many people here that would
16 agree that it is most intrusive. It's in the line of sight from
17 where I live, and I live on the, I don't know, probably a
18 football field from where the site is. Maybe two football
19 fields. I will see that. I don't want to see that. I have no
20 problem with my cell phone in that area.

21 This is a very high density neighborhood with single-
22 family residences, multi-cluster housing and high concentration
23 of businesses. A rezoning should not - should be denied. And,
24 you know, for AT&T, this is a terrible public relations effort.

1 Thanks.

2 ZONING EXAMINER: Thank you. I just remind people,
3 please, no comments from the audience. Everything needs to be
4 recorded from the microphone directed at me, and just for the
5 record. But also in terms of being civil and having an orderly
6 proceeding, I prefer that people not make cat calls or the like
7 from the audience.

8 All right. With that said, thank you, Mr. Fossdal.
9 Show of hands again. Let's - ma'am.

10 MS. KING: If I can reach it.

11 ZONING EXAMINER: Or you can use the portable one as
12 well there.

13 MS. KING: Okay. Oh. Good evening. My -

14 ZONING EXAMINER: Did you have a chance to sign in on
15 the sign-in sheet there?

16 MS. KING: My name is Donna King, and I have - I am a
17 resident of the neighborhood for 13 years. Reside at three -
18 3132 East Monte Vista Drive, which is just a couple blocks from
19 where this proposed tower is.

20 I do have a letter here from Tucson Waldorf School who
21 - they weren't able to be here this evening, but they did send a
22 letter in opposition to this. They have many concerns, I think
23 very important concerns. If you'd like me to read it, I'll read
24 it. If not -

1 ZONING EXAMINER: What I'd like to do is just enter it
2 into the record. I will read it.

3 MS. KING: Okay.

4 ZONING EXAMINER: And I'll make it available
5 (inaudible)

6 MS. KING: Okay. So for myself, I just wanted to say I
7 do not think - I've seen the cell towers. I do not think they're
8 attractive at all. And especially a 65-foot one, I'd rather not
9 see it in my neighborhood. It's - I believe it's not safe, it's
10 not attractive.

11 I don't have problems with cell phone coverage in my -
12 and I've been there for 13 years, so I really do not think we
13 need AT&T to - we're working, we've been working to beautify our
14 neighborhood. Work together as neighbors.

15 And instead of a 65-foot cell tower, I believe, I think
16 maybe the church could consider putting a park there. We need a
17 park in the neighborhood, not a cell tower. That's it for me.

18 ZONING EXAMINER: All right. Thank you.

19 MS. KING: Uh-huh.

20 ZONING EXAMINER: Anyone else? I'm not gonna go in
21 order by line. Let's be randomly fair here. Ma'am, in the back.

22 DR. FRANK: Good evening, Mr. Kafka. I'm Dr. Wanda
23 Frank, and I'm just - I would like to - I, I live at 3202 East
24 Presidio. My house would be looking right at the cell tower

1 where it's proposed. I would like to address a major area of
2 concern related to the placement of the 65-foot tower in the
3 Cabrini courtyard - church yard.

4 This tower would be directly viewed by residents,
5 congregants and passersby who would see the disruption of a
6 beautiful panoramic view of our Catalina Mountains. It would
7 supposedly be disguised as a palm tree that would stand alone
8 like a plastic Disney toy with shiny dark green leaves unlike a
9 natural palm that has gradations of color, and clearly look like
10 an imitation. It would stand out with smaller mesquite and palo
11 verde trees and never be mistaken for the real thing.

12 Just look at the tree on Country Club and Broadway that
13 stands out among the other palm trees. This palm tree would also
14 stand alone with two five-ton air conditioners, plumbing, along
15 with an operating generator, adding noise pollution to our
16 neighborhood. And this is of great concern.

17 In addition, this tower would result in increased
18 traffic on our street for maintenance and repair of this tower.
19 This tower was not zoned for a residential area but for a
20 business and industrial park. Other neighborhoods have described
21 these towers as ugly as sin, expressing great dismay that further
22 prolifer- - there is further proliferation of wires and antenna
23 that were added for increased transmission. It does not stop
24 with one palm tree.

1 Based on the above, I respectfully ask that, that the,
2 that the Zoning Examiner and representatives consider the impact
3 that would destroy the serenity and the beauty that adds to our
4 neighborhood environment and to the city as a whole. Thank you.

5 ZONING EXAMINER: Thank you. Ma'am, in the blue.

6 MS. RILEY: It's on?

7 ZONING EXAMINER: I believe it's on. Let's see if the
8 people can hear.

9 MS. RILEY: Hello?

10 ZONING EXAMINER: Yeah. I think if you lean in, people
11 will hear.

12 MS. RILEY: Okay. I'd like to talk about a few things
13 regarding the businesses that are in front of where this cell
14 tower -

15 ZONING EXAMINER: I'm sorry. If you could just state
16 your name.

17 MS. RILEY: Oh, my name. Susan Riley.

18 ZONING EXAMINER: Thank you.

19 MS. RILEY: Okay. A survey was done at the Winterhaven
20 Shopping Plaza at Country Club and Fort Lowell, and this is in
21 regards to any concern the businesses might have about the
22 proposed 64, 65-foot cell tower just south of their business.

23 This cell tower would actually show from their L-shaped
24 thing from behind, since it's so tall. And so I spoke with ten

1 businesses and with the option of yes, no, or not sure and the
2 availability to leave comments. There was not anybody that wants
3 that tower there, I'll say to start.

4 But of the businesses, there were eight businesses that
5 showed concern for any chances of the tower falling near their
6 business such as storm, lightning. It is quite tall, it's more
7 prone to that. Eight were concerned about it. Two were unsure.

8 Okay. And as far as businesses showed concern for
9 potential loss of air conditioning, seven were concerned about
10 this. Three were unsure.

11 I think the issue is that this is such a large, tall
12 item that people are afraid if something were to happen, there
13 would also be a time period of their business functionings not
14 working and such. And electromagnetic radiation if it should
15 fall, and loss of any kind of uses for their business functions.

16 Another issue was the businesses showed concern for a
17 disruption of - seven businesses showed some concern of business
18 disruption for any, any possible reason. One business was unsure
19 and two businesses were not concerned.

20 Businesses showed fear of microwave radiation from
21 antennas from the towers. I know you can't use that, but there
22 was nine out of ten people highly concerned about this. In fact,
23 one of the businesses does massage and other healing techniques
24 and they said, you know, that people are sometimes in here for an

1 hour to two hours. And it is adjacent to right behind where this
2 business is.

3 There was another business that was concerned, a pizza
4 place, because people go out there and take their breaks and sit
5 out there, and their view would be that. And there is some real
6 concern out there, even though you can't use that in this hearing
7 of this intrusive, loud, noise energy and visual energy and
8 health hazards, even though that's not something you will
9 consider. I just wanted to let you know how people feel in that
10 area in those businesses.

11 Seven businesses showed concern for financial loss for
12 any reason related to the tower, whether they had to close for a
13 while, a storm knocked it over or anything happened. Okay. And
14 one was unsure about it and two were not concerned about that
15 particular issue.

16 Businesses - six people were concerned about any
17 potential loss of their customer base or the customers that they
18 do have spending less time in their store than they normally
19 would due to any kind of anxiety or concern about electromagnetic
20 radiation.

21 I know that's not an issue, but there's people feeling
22 that that could affect, especially the healing center there that
23 does all those sort of techniques, there's some people that won't
24 even go there. Another thing peo- --

1 ZONING EXAMINER: Let, let me interrupt you.

2 MS. KING: Okay.

3 ZONING EXAMINER: At the price of - I do want to keep
4 people's comments short, and at the -

5 MS. KING: Okay.

6 ZONING EXAMINER: - price of spending time on things
7 that I, that I can't even use in my determination, I want to -

8 MS. KING: Loss of business.

9 ZONING EXAMINER: - I want to cut that off. But I do
10 want to ask you a question.

11 MS. KING: Okay. Okay.

12 ZONING EXAMINER: And that is, do you think that any of
13 those businesses would feel that an opportunity to discuss a
14 change in the location along the property, or a change in height
15 would be productive?

16 MS. KING: I, I think the visual impact is an important
17 fact, because it is seen, even though it's an L-shaped business
18 plaza. It's seen the minute you drive up. So I don't think the
19 closeness in proximity is, is something that they're happy about,
20 and the height also. But just to go down to 50 feet or 40 feet,
21 it's still gonna be that same kind of an issue for them.

22 And I'm almost done here. As far as - I, I already
23 mentioned this about a concern for the customer base. There is a
24 business there that is very concerned about it that does health

1 techniques, and concerned about it for themselves. And they
2 also, most of them do not want to see that big, honkin' 64-foot
3 thing when they drive up.

4 Okay. I would like to submit this to the record. Do I
5 just give it to you?

6 ZONING EXAMINER: Sure. Yeah.

7 MS. KING: Okay.

8 ZONING EXAMINER: Thank you.

9 MS. KING: Thank you.

10 ZONING EXAMINER: Anyone else wishing to speak? Sir.

11 MR. BYERLEY: Thank you, Mr. Kafka, for this
12 opportunity. My name's Leon Byerley. I'm an independent
13 lightning protection consultant. I've lived and worked here in
14 Tucson for about thirty-four or five years.

15 The last time I was in this room was in the 1990's
16 during the big cell phone build-out, the initial one, when I read
17 an arti- -- before that Coun- -- City Council meeting, I'd read
18 an article in the newspaper that the Council was considering
19 leasing public school grounds for cell phone towers.

20 I know that most of the prominent lightning
21 laboratories in the world use communication towers as the
22 laboratory. The reason being is that the frequency of lightning
23 to a tall structure is increased over normal. And the taller the
24 structure, the greater the increase in frequency. In fact it

1 goes roughly as the tower height squared.

2 So if we consider a 30-foot tall flagpole on the St.
3 Frances Cabrini church grounds in the location of the proposed
4 tower as having a certain probability of lightning striking it,
5 if we double that height, we don't get about twice the lightning
6 to that location, we get about four times.

7 So this steep increase of lightning incidents with
8 structure height is what makes communication towers productive
9 lightning labs. In fact, while we're having this meeting, there
10 are four lightning researchers here in Tucson that are working on
11 a proposal to use the new tower on Tumamoc Hill as a lightning
12 laboratory.

13 The - I'm gonna be discussing radiation, but not cell
14 phone antenna radiation. I'm gonna be discussing the radiation
15 from the lightning channel. The reason I want to just mention
16 this is that the imposition of a metal structure for the last
17 section of a cloud-to-ground lightning discharge acts as an
18 amplifier for the strong RF radiation from the lightning channel.

19 That radiation, the large electric field, the electric
20 field changes, the large magnetic field changes interacts with
21 the shared utilities of the neighborhood. The elevated power
22 lines, the phone lines, the cable TV, any conductors that people
23 have going in and out of their houses from satellite dishes on
24 their roofs. So this, this amplification of lightning radiation

1 is a definite negative effect of a tower.

2 After the City Council meeting in the 1990's, this was
3 during the time that Molly McCassen was on the City Council, City
4 of Tucson, I think, made a decision not to lease public school
5 grounds for cell phone sites. And tower heights were kept at a
6 reasonable - I think it's roughly 34 feet, but I don't know the
7 exact number. So I'm concerned that this case represents a creep
8 of location type in the wrong direction.

9 I've given you quite a lengthy report and I apologize
10 because I know your time is valuable. I've given you 70, roughly
11 70 accounts of tower lightning incidents that were gathered about
12 ten years ago over a period of about a year. I cherry-picked
13 these for their brevity because I value your time.

14 I omitted the accounts that I collected from City
15 Council meetings and County Supervisor meetings that - all over
16 the country that discuss the damage at local sheriff's offices,
17 police offices, 9-1-1 centers, telecommunication centers.

18 I urge you to do the best you can to read some of these
19 roughly 70 accounts so that you see what's happening in tower
20 lightning incidents around the country.

21 ZONING EXAMINER: All right, Mr. Byerley, thank you.
22 I have, I do have the report here. I believe that it was also
23 scanned. And Carolina, you can confirm that it was scanned and
24 put on the PDS website.

1 MS. ALMAREZ: I'm not sure about the website
2 (inaudible)

3 ZONING EXAMINER: Okay. And then I can make that
4 available to Mr. Lake and Mr. Burmer as well.

5 MR. BYERLEY: I'd like to make one more comment,
6 because this is an issue that can be easily confused and
7 conflated and exaggerated.

8 I've mentioned in my report, letter report to you
9 that this is not an egregious case. It's a significant case,
10 but not an egregious case. An egregious case would be to take
11 the St. Frances Cabrini Church, and its surrounding neighborhood,
12 and move that to Orlando, Florida, and put up a 300-foot tall
13 tower. Now that would be an egregious case. I included two
14 photographs -

15 ZONING EXAMINER: I don't have that within my power to
16 recommend.

17 MR. BYERLEY: I've included two photographs from
18 showing lightning strikes to towers, and the feature I want you
19 to look at is the horizontal jog that the lightning takes just
20 before it hits the tower. This is what we're - this is what I'm
21 here to talk about. I'm not talking about the tower increasing
22 the lightning incidents in the whole region, or sucking in
23 lightning from South Tucson, or doing anything of the kind.

24 And it's quite easy for people misconstrue what I'm

1 saying, and that's why I included a copy of the paper we
2 presented at the 1999 International Atmospheric Electricity
3 Conference. It's a technical paper. It may be a little hard to
4 understand the language that's used because it's in engineering
5 physics language.

6 So I included the case histories as a way to back up
7 what is said in this paper because without reading these case
8 histories, it's almost impossible to get a sense of how
9 widespread this problem is, that is, lightning to towers, and bad
10 things happening in the very near vicinity of the tower. So I
11 really appreciate the chance to talk about this. Thank you.

12 ZONING EXAMINER: All right. Thank you. Anybody else?
13 Sir. I believe on the transcript, the last transcript, your name
14 was spelled H-O-B-B-E-R-M-A-N.

15 MR. HABERMAN: Incorrect.

16 ZONING EXAMINER: I'll see if they can't change that.

17 MR. HABERMAN: Okay. Yes. It's H-A-B-E-R-M-A-N.

18 Thank you.

19 Mr. Kafka, I would request that the City of Tucson
20 Rezoning take into careful consideration where they allow cell
21 towers to be located because of the adverse effects it can have
22 on the community. The telecommunications corporations are
23 targeting churches and schools because they need the money.
24 Churches and schools are often in neighborhoods.

1 We believe that cell towers do not belong in
2 neighborhoods. The proposal to place a cell tower in the Cabrini
3 Neighborhood had caused great controversy and deep divisions that
4 have been created between church leaders and some of the
5 neighbors and among the neighborhoods.

6 In my 25 years of living there, I have never
7 experienced such animosity among the neighbors here. Personal
8 relationships formed over a period of time, including our
9 community building efforts through the Cabrini Neighborhood
10 Association have been disrupted. Cell towers do not make good
11 neighbors.

12 Until this cell tower proposal was announced about nine
13 months ago, we lived here in our neighborhood in peace. It will
14 be a long time before this community will heal from this
15 experience. And if the cell tower is approved, this neighborhood
16 community will never be the same again.

17 To some of those who are members of the church, they
18 have made this a personal issue, and this is a very small amount
19 of people, and cannot see the bigger picture of how it affects
20 the entire neighborhood, and also other residential neighborhoods
21 throughout Tucson who we have spoken with.

22 Also, there's the question of ethics here. If the
23 zoning review permits a cell tower to be wedged in a narrow strip
24 of commercially-zoned parcel in St. Frances Church property, it

1 is residentially zoned on three sides. And the protections that
2 come with being zoned R-2 are being ignored.

3 Visually, and finally, the 65-foot cell tower would
4 stand as a distracting eyesore in the middle of the beautiful
5 view of the Catalina Mountains that I enjoy every day from my
6 home, and my neighbors.

7 I recommend that this application be denied. The cell
8 tower be relocated further away from a residential area. And I
9 have one statement from a realtor, it's very short. Could I
10 share that with you?

11 ZONING EXAMINER: If you could just submit it.

12 MR. HABERMAN: Okay.

13 ZONING EXAMINER: And -

14 MR. HABERMAN: Okay. Thank you.

15 ZONING EXAMINER: Is it one that says that property
16 values go down or property values go up or -

17 MR. HABERMAN: It's -

18 ZONING EXAMINER: (Inaudible)

19 MR. HABERMAN: - the opinion of a realtor based on her
20 experience that it makes properties more difficult to sell, and
21 pretty much speaks for itself. It's -

22 ZONING EXAMINER: Okay.

23 MR. HABERMAN: - you know, against the, the diminishing
24 values that a cell tower could have on real estate.

1 ZONING EXAMINER: Thank you. Let me, let me ask you
2 the same question I posed before. Do you think that there'd be
3 anything productive in discussion - I believe it's Mr. Brady who
4 mentioned that the possibility of moving the tower on other
5 portions of the C-1 portion of the church property was open.
6 There might be some ways to mitigate height, and whether there
7 might be any fruitful result of neighborhood discussion on those
8 issues.

9 MR. HABERMAN: Boy, that's, that's a good question. I
10 don't know if I can answer that. It seems to me that unless the
11 cell tower were moved significantly further north, I mean, I
12 would say possibility, but minimal.

13 ZONING EXAMINER: Okay. Thank you.

14 MR. HABERMAN: Thank you.

15 ZONING EXAMINER: Anybody else wishing to speak on this
16 issues? Ma'am.

17 MS. KELLEY: Good evening, Commissioner Kafka. I'm
18 Elizabeth Kelley, Electromagnetic Safety Alliance. I don't live
19 in the neighborhood, but I've been interacting with the neighbors
20 there for several months, and discussing the proposal with them.

21 I did submit a letter to you. Before I discuss that
22 letter, I'd like to mention that there is an issue which I didn't
23 raise. I'd like to just quickly pass by, and that is the issue
24 of the generator. I'm told that AT&T is putting in generators

1 now with their towers. There's no generator in the current
2 proposal. There was no generator taken into account in doing a
3 noise study.

4 However, I believe that a generator would be installed
5 there at some later date. And I don't understand the sequencing
6 of the generator, and I think it might be appropriate, since
7 there will be one, to take that into account in doing a noise, a
8 noise study. Even though it's a theoretical study, it's as close
9 as we're gonna get at this time.

10 As to the letter that you have in the record, I raised
11 two issues. One is property values, about property values. Mr.
12 Burmer of the FM Group at the last meeting representing AT&T cell
13 tower proposal said that the National Association of Realtors has
14 a report saying that, that people value access to signal
15 availability for wireless broadband over other property features.
16 And that when there is - when there are homes with access to
17 broadband, there's a six percent higher property value than those
18 that - communities that don't have broadband.

19 And my question of Mr. Burmer is where do you get this
20 information? I contacted the National Association of Realtors.
21 I spoke with the staff librarian there. She said she wasn't
22 aware of any studies that show the relationship between property
23 values and access to broadband or wireless broadband, either one,
24 'cause there's cable broadband, you know, and wireless - not only

1 wireless broadband.

2 And the other point is the six percent higher property
3 value estimate. She didn't know of any studies, but she did tell
4 me about a study that's currently posted on their website,
5 February 2013, showing that the top priorities that people value
6 in home features are kitchens and garages. So I would really
7 like to know where that information came from with the NAR.

8 Secondly, the radio frequency report does not provide
9 enough information on the wattage output. And I submitted some
10 questions about that, and I'm glad the RF engineer is here this
11 evening because the values may be higher than what is being
12 represented, but there's not enough data in the RF report to make
13 that initial, or ongoing determination.

14 The overtime with the increase in the number of
15 customers and the introduction of more data transmissions, data
16 transmissions require more power, as they've already indicated.
17 That's why they want to put these towers more closely located.
18 That these values will increase over time.

19 And so it's not just what we're looking at right now in
20 this proposal, it's what's coming next. It's a co-location site,
21 more antennas would be coming next. And so we really need more
22 data to understand this RF report.

23 That's all I have to say in my statement. Is there
24 anything else? I'd like to receive an answer if I could.

1 ZONING EXAMINER: I actually will have a que- --
2 similar question that I'd like to ask, but I'm gonna reserve it
3 'til after everybody's done speaking.

4 MS. KELLEY: Okay. Thank you.

5 ZONING EXAMINER: All right. Thank you.

6 MS. KELLEY: Thank you.

7 ZONING EXAMINER: Thanks.

8 MS. MICEK: Good evening. My name is Christina Micek,
9 and I'm resident of the neighborhood. I live at 3431 East Glenn,
10 and I'm here just to support my neighbors. I have been involved,
11 getting more involved in the neighborhood association and was
12 participating in the beautification projects in the neighborhood.

13 And just want to confirm that - or enter my testimony
14 also that I would like to continue to see the neighborhood spend
15 time beautifying our, our neighborhood, and not putting up things
16 that are going to bother the residents.

17 And to address the market needs question of, is this
18 going to be providing better service to people in the area? I
19 personally do not have any problems with my cell phone coverage
20 or the data speeds that I'm experiencing at this time. So I
21 would not be in the market to need anymore cell towers in the
22 area. Thank you.

23 ZONING EXAMINER: Actually let me put the question I
24 put to a few other people to you as well, because you spoke to

1 the issue of beautification, or on the reverse side of that,
2 mitigating visual impact. Do you think it would be productive to
3 have further discussions about the best possible location if one
4 was to go in where a tower might be for visual impact, and, and
5 whether height could be addressed in that as well.

6 MS. MICEK: As far as height in the neighborhood, I
7 don't - I can't even think of any two-story buildings. So any
8 tower even 50 foot - 50 feet tall would be sticking out.

9 ZONING EXAMINER: But if I were to ask Mr. Lake and Mr.
10 Burmer and their design team to meet with neighbors to discuss
11 possibilities for alternative designs or alternative locations on
12 the church site, do you think that would be a fruitless
13 discussion?

14 MS. MICEK: I think that would be fruitless.

15 ZONING EXAMINER: Okay. Thank you. Anyone else
16 wishing to speak? Sir.

17 MR. McDANIEL: My name is Jack McDaniel. After, after
18 your repeated questions about the, the purpose of, of a tower,
19 the answer, to AT&T, it seemed clear to me that their, their
20 primary concern is competition, and to, you know, sell their
21 service.

22 I'm of the mind that the City Planning is not here to
23 assist corporations to compete, whereas, it is here for the well
24 being of residents of Tucson. I have to put in my address.

1 The, the long-term effects of, of cell phone towers at,
2 at all levels, at real estate levels, at lightning levels, at, at
3 the inadmissible evidence of health issues, have only been tested
4 at a very short-term level.

5 And, you know, even though you can't talk about the
6 health issues, I'm sure they, they have to color everybody's
7 thoughts, especially in the sense that, you know, you don't get
8 cancer by sitting next to somebody who has cancer. You, you get
9 cancer 15, 20, 30 years down the road.

10 And so the, the testing of, of cell phones and, and any
11 effect they would have of any kind is, is young information. And
12 again I would stress that the, the City is here for the, the
13 well-being of the citizens, which includes the businesses of
14 Tucson. And that, that just has to be taken into account.

15 ZONING EXAMINER: Thank you.

16 MR. McDANIEL: Thank you.

17 ZONING EXAMINER: Anyone else? Ma'am?

18 DR. WEBER: Hello. My name is Dr. Miriam Weber, and I
19 don't live in the neighborhood, but I do live in Tucson, and I
20 have a medical practice here.

21 I'm here because I think this is a citywide issue, and
22 for that reason I've been following closely what is happening in
23 this neighborhood. And I'm concerned because in my case, I live
24 only a block and a half from a church. And that church is a

1 little island in the middle of a residential area. And if by
2 chance we didn't have what was considered adequate cell tower
3 coverage to meet the needs of certain corporations, we, too,
4 could have a cell tower suddenly being planned for our
5 neighborhood.

6 Unfortunately, I'm not allowed to really speak about
7 health effects because I understand that doesn't fall within the
8 criteria of this hearing, and also under the federal law. But I
9 would like to say that there is a growing, mounting body of
10 research on health effects of EMF, and with that, there is a
11 perception that's growing in our neighborhoods and our
12 communities.

13 And that perception is going to affect people's
14 feelings of safety, security and whether they wish to live in a
15 particular neighborhood, or whether they wish to visit, such as
16 somebody wishing to visit my business and, and it could, in turn,
17 affect my business, for instance, if I had one of these located
18 very close to me.

19 This, in turn, affects property values. If people
20 don't want to move into a neighborhood, because not only do they
21 see something such as, let's say, you reduce this to a 50-foot
22 level, this tower. As the previous, one of the previous people
23 said, "That's - in my neighborhood, there are only single-story
24 structures. A 50-foot tower is going to stand up like a mountain

1 or a little hill in my neighborhood, and it's really going to not
2 be able to blend in with a, with a fake palm tree."

3 So I'm concerned, and I hope that the decisions that
4 you make, you understand that the ramifications go beyond this
5 particular neighborhood. Thank you.

6 ZONING EXAMINER: Thank you. Anybody else wishing to
7 speak? All right. Oh, sir, did you want to -

8 MR. WILLIAMS: My name is Dennis Williams. I do not
9 live in the Cabrini Neighborhood, but I have property there. And
10 I wanted to submit first this buyer advisory from the Arizona
11 Department of Real Estate. And I wanted it to accompany a
12 previous submission that I made to you by mail.

13 ZONING EXAMINER: That was from AM Best?

14 MR. WILLIAMS: Yes.

15 ZONING EXAMINER: Yes.

16 MR. WILLIAMS: Uh-huh. This one. And while you're
17 here, I have a residential seller advisory, and I also have an
18 FHA minimum property standards advisory. These are all
19 advisories for, for sellers stating that they must include in
20 their report on their property before selling it, they must
21 include information about environmental hazards, including
22 electromagnetic radiation.

23 I'm having a little bit of trouble understanding some
24 things. I don't know who draws these maps, and I don't

1 understand why there isn't an independent agency that's drawing
2 these maps, or if AT&T is drawing them, why there isn't a
3 competing concern that's drawing other maps that would reflect
4 less of a motive.

5 I'm also wondering about a previous report that we had
6 at the last hearing in which an engineer said that a cell phone
7 tower only emits five watts of radiation, and a microwave emits
8 substantially more than that. And I don't remember his exact
9 figures, but if a five-watt tower - we're just calling it that
10 for the sake of a hypothetical, requires five tons of air
11 conditioning to cool it, then a home microwave, instead of a
12 little bitty fan inside of it would require about three or four
13 times that number of ton - of tons of cooling.

14 I work as an AC repairman as my day job. And I can't
15 imagine having a five-ton, or a ten-ton air conditioner next to
16 my microwave to cool it down. So basically, I just didn't
17 understand how that report made any sense at all. I just wanted
18 to comment on that.

19 And I'm wondering why we're measuring things in the way
20 that we are here. I'm wondering why we're trying to compare the
21 rights of people who don't want to be inconvenienced by lack of
22 data coverage, because that's what we're talking about. We're
23 not talking about lack of cell phone coverage. Why we're
24 concerned about AT&T's need to compete with Cox Cable, for

1 instance. I don't understand that, and why if they ha- -- if
2 they don't, if they can't find a location that's safe and
3 properly distanced from an R-2 zone, why is that supposed to be
4 our problem?

5 We're supposed to be guaranteed a certain amount of
6 safety and security in our homes and in our apartments. And
7 there's a lot of this that I'm not, I'm having difficulty
8 understanding. How we compare rights versus rights to safety and
9 health versus the rights to information. And why we're assisting
10 in the competition between AT&T and some other company that's got
11 cable, and there's never going to be an adequate compensation for
12 the competition between cable and, and wireless.

13 So why are we even talking about it? Why don't we just
14 let - this is supposed to be a free market economy. Why don't we
15 just let the entities concerned compete with each other? And why
16 is it the responsibility of the neighborhoods to assist in that -
17 in AT&T's competition?

18 I don't understand how - I don't understand the FCC
19 ruling, or the Communications Act in its prohibition of the
20 consideration of health concerns. It seems to me that this is an
21 impossible concept. I'm not rebelling against their ruling, I'm
22 just saying that it seems to me that it's basically incoherent in
23 that we are talking about health concerns when we mention AM
24 Best, when we mention the FHA guidelines, when we mention the

1 proper disclosure for sellers. All this derives from health
2 concerns and people's fears for their health and safety.

3 And I don't understand what could be more properly in
4 the purview of a Zoning Hearing Examiner than the health and
5 safety of the neighborhood. And if a government entity says you
6 can't consider these things, I, I doubt the legitimacy of their
7 statement. I doubt the coherence of their statement.

8 I think what they're trying to do is draw a bright line
9 across a continuum. There's no, there's no bright line that you
10 can draw across, for instance, a river. Wave if you get my
11 drift.

12 There's - let me just pose an example. A Zoning
13 Hearing Commissioner and a FCC Commissioner and an AT&T
14 spokesperson disguised as a palm tree, and a Valley girl walk
15 into a bar. The FCC Commissioner draws a bright line down a
16 bottle of beer and he says, "You can drink from the left side,
17 but not the right side." The Valley girl says, "Whatever."

18 The second proposition I'd like you to consider, two
19 Irishmen walk out of a bar. That could happen. My first
20 proposition has got to be some kind of joke. And I just put the
21 Valley girl in there to represent the incomprehensibility of all
22 of this to me. Thank you.

23 ZONING EXAMINER: Thank you, Mr. Williams. Some
24 probing questions. Anybody else wishing to speak? Ms. Poulos.

1 MS. POULOS: Thank you, Mr. Zoning Examiner. Bonnie
2 Poulos. I'm not a resident of the area. The discussion that
3 took place at the last meeting and tonight has raised an issue in
4 my mind that I think needs to be brought out for the public
5 record.

6 The City in its attempt to make this cell tower more
7 palatable to the neighborhood and the community has required
8 certain things of AT&T, the Applicant. And that would be the
9 planting of the palm trees, the disguising of the tower as a palm
10 tree, and the landscaped buffer around the ground yard.

11 And we've heard the Applicant, or the representative
12 for AT&T state at the last meeting that it was not their
13 responsibility to put in the palm trees or to maintain them, or
14 to maintain the landscaping.

15 And then today we heard from the property owner who's
16 going to benefit from the lease with AT&T also state that they're
17 not responsible for the trees, for maintaining them in
18 perpetuity, and they didn't want any of the landscaping because
19 they felt it was unnecessary.

20 So I think this raises the issue of who is going to be
21 responsible for this? And as a neighborhood activist, I know
22 that enforcement of existing codes is very difficult. And yet,
23 if there is an agreement between the City and the Applicant, it
24 seems to me that the Applicant is the one who is ultimately

1 responsible for all of the conditions of this zoning.

2 And I also would like to ask a question that I don't
3 know that you can answer, but perhaps it could be raised with the
4 City in your report, is that I thought the City had a policy that
5 they did not want to place cell phone towers any closer than one
6 mile apart.

7 And yet the Applicant stated that his search ring for
8 this application was only a half mile. Is that the new norm? Is
9 that what we are to expect in the future in the City, and what's
10 the City policy going to be on that? Thank you very much.

11 ZONING EXAMINER: Thank you. Anyone else? All right.
12 Mr. Burmer, Mr. Lake?

13 MR. LAKE: Yes, sir.

14 ZONING EXAMINER: If you'll be patient with me as I go
15 through my notes. Let's start with the question about the,
16 whether the towers can ever exceed the FCC requirements through
17 co-location or some sort to technological drift.

18 MR. LAKE: Not sure I understand your question.
19 Exceed what?

20 ZONING EXAMINER: The requirements for emissions.

21 MR. LAKE: So, that is a good question. There are FCC
22 requirements for RF emissions, and we must meet those
23 requirements and not exceed those requirements.

24 ZONING EXAMINER: So additional antenna or co-locations

1 in the aggregate could not exceed that, or you wouldn't be
2 allowed to exceed it.

3 MR. LAKE: That's correct. Must constantly be in
4 compliance with FCC emission requirements.

5 ZONING EXAMINER: Perhaps we can have an educable
6 moment on the Telecommunications Act. And if you can speak to
7 your views on the balance between what is required by local
8 jurisdictions and what is allowed local jurisdictions in their
9 review, as well as the issue of evidence of health effects, or
10 environmental effects not being offered for the truth of the
11 matter, but for its perception on other issues that might be
12 relevant to someone in my position, such as property values for
13 health insurance rates. Maybe you can speak to those issues.

14 MR. LAKE: You're asking me to wax a little
15 philosophical perhaps.

16 ZONING EXAMINER: I, I, I think Mr. Williams introduced
17 some philosophy into this evening, so -

18 MR. LAKE: Go back into the late '80's, late '80's, and
19 early '90's. I was involved in the industry back then as well.
20 I think several others were as well. We had - back into the late
21 '80's, early '90's when the cellular, when the wireless companies
22 began marketing and building out its infrastructure. The
23 question was, where do we put this infrastructure?

24 Everybody wants - well, maybe not everybody. Almost

1 everybody wants a wireless phone. Everybody likes the
2 convenience and the safety of a 9-1-1 call wherever they're
3 located. People like to have broadband coverage. We like to be
4 able to provide broadband coverage to every community, regardless
5 of whether it's a big home or a small home, rural, urban.
6 Everybody benefits from the pro- -- from providing wireless voice
7 and data.

8 We get to the middle 1990's, and it's obvious that
9 we're having attention drawn between cities and counties, and
10 neighborhoods versus the telecom carriers. The telecom carriers
11 have gone and spent billions, billions of dollars purchasing
12 licenses. And with those licenses, they are obligated to provide
13 coverage.

14 But how do we balance the obligation to provide
15 coverage with trying to protect neighborhoods? So that's why the
16 Telecom Act was created to try to create that balance. And when
17 Congress enacted it, they - one of the things they said was, and
18 I know people here in this room won't believe it, Congress said,
19 "We have established it as law, that wireless does not pose -
20 wireless ambitions do not pose a health risk to the extent that
21 we can consider it in deciding where to put wireless sites."
22 That's the law. People may disagree with it. I understand that.

23 Then as we move forward into the late '90's and into
24 the middle 2000's, people started asking, "Okay. The Telecom Act

1 has certain requirements on how we can site different locations.
2 How do we draw a further balance between cities and neighbors and
3 the telecommunication companies?"

4 And that's where we have the Federal, District Courts,
5 the Circuit Courts of Appeal. All these courts have been ruling
6 on cases where neighborhoods and cities have been disagreeing
7 with telecommunications carriers.

8 And the courts have come to the conclusion, and have
9 established the two-prong test. This two-prong test was
10 established several years ago. The test is, number one, in order
11 to build a site, you have to show that you have a gap in
12 coverage.

13 And number two, you have to show that the wireless
14 companies are seeking out every alternative, and every
15 configuration to try to cause the least amount of intrusion into
16 a neighborhood's area in order to build a site. But once we
17 prove that, then the site gets built. Is approved and must get
18 built.

19 Hopefully that answers your question. Is there
20 anything else that's specific that you'd like me to address on
21 that topic?

22 ZONING EXAMINER: And that issue, there was a question
23 posed by Mr. Williams as well about taking you at your word. And
24 I, I receive these as affidavits and under engineers' stamps and

1 maybe you can enlighten us about the reliability of that as
2 information, seeing as how I, I don't have an in-house consultant
3 that -

4 MR. LAKE: Okay. The ques- -- I think the question is,
5 are our propagation maps accurate or are we fudging? We call -
6 if you'd hold up the prop map. This is the map we call - we
7 refer to in the industry as a propagation map. It says where is
8 - when you build a cell tower, where does the coverage go?

9 These are maps that we create at AT&T by certified
10 engineers like Ozgur and others who identify where these maps go.
11 Now if you think about it, AT&T has a very strong incentive to
12 pay a dividend to its shareholders. People here may own AT&T
13 stock.

14 MALE SPEAKER: (Inaudible)

15 MR. LAKE: Okay. Well, whatever. But it does have
16 millions of shareholders. AT&T makes money when it can provide
17 good coverage at the lowest possible cost. It costs lots of
18 money to build cell towers. Consequently, we want to build as
19 few cell towers as we possibly can, and still have good coverage.

20 Here, however, the propagation map shows that we do not
21 have good coverage in that area, and as a result, AT&T is willing
22 to put down a significant sum of money to go build a tower and
23 provide good coverage to people who live in the area.

24 ZONING EXAMINER: Okay. Thank you. I'm gonna get back

1 to the philosophical issue of the health effects. And I will not
2 use those in making my determination. But I do want to pose the
3 question, if tomorrow morning we woke up and the New England
4 Journal of Medicine said these things have health effects that
5 are very negative and this is the empirical study that is
6 flawless, and the TCA says I can't take into account that, what
7 about the perception that people would have in terms of buying
8 homes adjacent to these, or business - operating businesses or
9 doctors' offices next to those?

10 MR. LAKE: You're asking me to speculate on a -

11 ZONING EXAMINER: I am.

12 MR. LAKE: - a question that - no, there's not even -
13 under debate right now.

14 ZONING EXAMINER: And, and what the TCA does is say -

15 MR. LAKE: TCA takes that question -

16 ZONING EXAMINER: - local, local authority cannot -

17 MR. LAKE: - pulls it off the table.

18 ZONING EXAMINER: - continue - yeah. Local authority
19 cannot consider this at all. That's exactly what I - I think
20 everybody understands that here (inaudible)

21 MR. LAKE: I think you've made that perfectly clear.

22 ZONING EXAMINER: All right. If you'll bear with me
23 once again, I'll review my notes. One of the reasons I asked
24 people whether they thought it would be fruitful to sit down and

1 talk about alternatives to the proposed design is because I'm not
2 thoroughly convinced by what I've received, that this is the
3 least intrusive means to achieve your goal.

4 And I may look at that in terms of just the site
5 itself. I, I have the maps that I want to review with the other
6 alternate sites, and the alternate site analysis. And that seems
7 to suggest that you've narrowed down the sites.

8 But as to the site itself, I think even Mr. Brady had
9 said that the location was chosen not in terms of its impact on
10 cell reception or it's with considerations of least intrusive use
11 in mind, but just where they wanted to put it.

12 MR. LAKE: Right.

13 ZONING EXAMINER: So - and the reason that I'd asked
14 people if it'd be fruitful to discuss that is because I do want
15 to send you back to discuss with the church and explore alternate
16 possibilities there.

17 MR. LAKE: Within the location (inaudible)

18 ZONING EXAMINER: Within, within the location. I don't
19 see a need to make that a public meeting, but because I didn't
20 get anybody saying that they would want to attend that. If
21 somebody does want to attend, I would like it to be available for
22 them if they want to -

23 MR. LAKE: Certainly.

24 ZONING EXAMINER: - put in their two cents on that.

1 MR. LAKE: That discussion may occur over the
2 telephone, however.

3 ZONING EXAMINER: Well, you're (inaudible)

4 MR. LAKE: Between AT&T and the church.

5 ZONING EXAMINER: Okay. If it's over - if it's
6 telephonic, I'd still like it to be in a place and time where
7 somebody could - or it could be announced prior to that, and they
8 could attend.

9 MR. LAKE: Understood. Okay.

10 ZONING EXAMINER: Maybe at the church and I assume
11 you'd want to do it by phone.

12 MR. LAKE: If there is interest, genuine interest from
13 the neighbors to address the specific location of the site within
14 the church property, and it's a genuine issue that they want to
15 maybe move it for one reason or another, we would be happy to
16 have them part of the discussion.

17 ZONING EXAMINER: I would also like to - and, yes. I'd
18 also like to have engineering data on heights lower than 65 feet,
19 maps that show what the coverage would be at heights less than
20 that.

21 MR. LAKE: Ozgur, can we prepare prop maps at height,
22 and then maybe five or ten-foot gradations downwards?

23 MR. CELIK: (Inaudible)

24 MR. LAKE: What, what, what gradations? How many feet

1 difference would you like to do those at?

2 MR. CELIK: Can I comment on that?

3 MR. LAKE: Please.

4 MR. CELIK: I, I can, I can prepare whatever range you
5 want, but I'd like to, I'd like to point out that our decision
6 with the height is based on our existing sites, too. And this is
7 a prediction model.

8 And, and the real live coverage, once the cycle is on
9 air, will be dependent on the obstructions around it. And this
10 prediction model was based on average heights around the area.

11 And in, in our experience, once you go below the 50-
12 foot levels, the sites become pretty useless in the sense that
13 the coverage around them becomes pretty much a duct with a lot of
14 - even if you put a lot of them, it still looks like Swiss
15 cheese. So it is real threshold. Once you go above them, it's
16 like an umbrella. All of a sudden it breathes and covers a lot
17 more. I'd like to point that out.

18 ZONING EXAMINER: And thank you for pointing that out.

19 MR. CELIK: Sure.

20 ZONING EXAMINER: I would, I would like to see -

21 MR. CELIK: Sure.

22 ZONING EXAMINER: - where that pinch point is.

23 MR. CELIK: Okay.

24 ZONING EXAMINER: And I know that these are models, and

1 it's based on speculation, or theory. But that's all I have.
2 You know -

3 MR. CELIK: Sure.

4 ZONING EXAMINER: -that's what I'd have to go on
5 anyway. I'd also like to give you an opportunity to respond, Mr.
6 Lake, to the lightning issue. I'm gonna read that report, and
7 we'll put it on line, and e-mail a copy to you as well.

8 MR. LAKE: That's fine. I appreciate it.

9 ZONING EXAMINER: (Inaudible) safety issue. You had
10 made an indication that you did not really choose to address the
11 property value issue.

12 MR. LAKE: I can, however. There were, there were
13 questions. People said, "Where did AT&T come up with that?" I
14 can provide my own bit of anecdotal information, and I can also
15 provide you objective information.

16 I live across the street from a high school. There are
17 five wireless sites across the street within 200 yards of my
18 house. For some reason, I don't mean - I shouldn't be facetious,
19 but my house value went up from the middle '90's up until the
20 middle 2000's. Then all of a sudden they went down again from
21 2007 to 2012. Now they're coming back up again.

22 I offer that house values are tied to real estate
23 market issues as opposed to cell towers, my house being one of
24 them. Now that's anecdotal. This is the report that I believe

1 Mr. Burner referred to previously which refers to the NAR study,
2 which identified wireless data and voice as a key component
3 equal, perhaps, even rising up to the level of having water and
4 electrical utilities in a house.

5 Wireless is getting to that point. It's of equal
6 value. Plus it also refers in the footnote to the specifics that
7 he identifies as six percent increase in values. So you have
8 that.

9 ZONING EXAMINER: Thank you. Because what I have in
10 front of me is, is not anecdotal. I have solid evidence from
11 actual residents who are concerned that their property values
12 specifically on their properties that are adjacent to the site
13 will go down.

14 MR. LAKE: Sure.

15 ZONING EXAMINER: So I need to recognize that.

16 MR. LAKE: Understood.

17 ZONING EXAMINER: All right. Before I continue, does
18 anybody else wish to make a comment? Mr. Williams?

19 MR. WILLIAMS: I'd just like to address some of the
20 remarks that were just now made by the lawyer of AT&T.

21 ZONING EXAMINER: Sure. Let - again, let's keep it
22 very brief, 'cause I have -

23 MR. WILLIAMS: Okay.

24 ZONING EXAMINER: - three more cases after this.

1 MR. WILLIAMS: All right.

2 ZONING EXAMINER: And I, I want to thank everybody
3 who's not on this case for their patience in, in these
4 proceedings.

5 MR. WILLIAMS: I just want to bring up the point that
6 previously AT&T stated that this was not about voice
7 transmissions. It was about data. And the concerns that - I'm
8 sorry. I don't remember the gentleman's name - that he brought
9 up where - about - he said that they need to compete with voice
10 transmissions. But previously they said there was no problem
11 with voice transmissions, just with data, and the competition for
12 data.

13 And once again, I object to the comparison of the
14 responsibility to the shareholders of AT&T and their money,
15 comparing that to the responsibility that we have for the health
16 and safety of the residents of the Cabrini Neighborhood. I don't
17 think it's a legitimate comparison, I think it's an insulting
18 comparison.

19 And I would say that I believe that the Communications
20 Act is not going to stand future legal scrutiny because it's too
21 broad, and too intrusive. It intrudes into the rights of the
22 locality to regulate the life and the, and the commerce within
23 its environment.

24 It, it's too intrusive - it's too broad. It tries to

1 say too much and so essentially it says nothing. The idea that
2 you cannot consider health concerns, I believe, is just a
3 convenient legal fiction. And you can assert to that same legal
4 fiction, you can say, "Okay. I didn't consider them." That's a
5 legal fiction, too. One legal fiction is equal to another one.
6 Now we can all get on with our day.

7 ZONING EXAMINER: Thank you. Actually before Ms.
8 Kelley, the woman in the back, I don't think you've spoken
9 before.

10 MS. HALL: Hello. Good evening. My name is Jamie
11 Hall, and I'm working with a realtor currently to sell my home.
12 And he has informed me that since I've become aware that there's
13 a cell tower across the street from my home, that I have to tell
14 all potential buyers who look at my home that there's a cell
15 tower that's going up. And they have the option of taking that
16 into consideration when looking, and possibly considering buying
17 my house.

18 I've asked him if he could just not tell people because
19 it is my goal to sell my house. And he said, no, that by law he
20 has to tell people because apparently a lot of people don't want
21 to live near, or around a cell tower. Thank you.

22 ZONING EXAMINER: Thank you. Ms. Kelley.

23 MS. KELLEY: Yes, I wanted to make some comments,
24 please, first of all, quickly on (inaudible) refinances are also

1 subject to being adversely affected about - when there is a cell
2 tower in close proximity.

3 The Telecommunications Act of 1996 has not just had a
4 chilling effect on communities when they have to oppose a tower
5 without bringing up health, but states and governments, state and
6 local government as well, well. That's what makes these hearings
7 so difficult for everyone. It's like a charade. You can't talk
8 about the elephant in the room.

9 I was wor- -- I've been working on this issue for 18
10 years, and I was one of the leading appellants who brought policy
11 appeal, challenging the FCC in Federal Court in 1997 for failure
12 to protect public health under the Telecommunications Act,
13 Section 704, and by the mandate that the FCC human exposure
14 guidelines are the law of the land.

15 Our case did not succeed. It doesn't mean we're wrong.
16 The reason why there's no case law addressing health in this
17 country is that the law itself forbids any case laws - cases
18 being brought in the courts that bring up the health issue.

19 That has had a chilling effect on the whole court
20 process. Nevertheless, the law is right for review at this point
21 after all these years because of all the number of, of people,
22 state, local, now cases going even higher, that started locally,
23 representing people who have been harmed, not involving health,
24 but other issues as well.

1 And I know that state and local government associations
2 are numbered among the many groups that are opposing the tenets
3 of the law and the way the FCC guidelines are the law of the
4 land. And when we brought our case, we were joined by the
5 Communications Workers of America.

6 Morton Bayer (ph.), president at the time, signed onto
7 the case himself, challenging some of the FCC guidelines as they
8 affected workers. And they also are representing the
9 International Brotherhood of Electrical Workers at that time.
10 And I've worked with them, and I know their concern.

11 The World Health Organization classified radio
12 frequency radiation as a class two human carcinogen in 2011.
13 When they released that document, the chairman of the
14 international agency on research on cancer who made the
15 recommendation to the World Health Organization said, "Our
16 determination is - applies to all sources, even though the major
17 underpinning of the evidence that led to our determination was
18 cell phones and brain tumors, acoustic naromas (ph.), which is a
19 non-malignant tumor.

20 There's other evidence, too, and they're not excluding
21 other sources. That means cell towers. And there is building
22 evidence. Thank you.

23 ZONING EXAMINER: Okay. I'm - yeah, I'm gonna stop you
24 there, and I think you know why. All right. All right. I want

1 to thank everybody on this case for coming out this evening and,
2 and speaking.

3 I'm gonna continue it, allow an opportunity for the
4 Applicant and the church to address some of the issues that I
5 talked about. I'd also like to see, as Ms. Poulos had pointed
6 out, the lease agreement that provides for maintenance between
7 the church and between the Applicant. Between AT&T, excuse me.

8 MR. LAKE: (Inaudible) the palm trees, the landscaping?

9 ZONING EXAMINER: The landscaping maintenance, the
10 maintenance of the palm - those, those - they cause - everybody
11 knows they cause litter.

12 MR. LAKE: I have a list of three issues. Just to
13 confirm with you to make sure I address all of your concerns and
14 the conversations we have with the church. One is -

15 ZONING EXAMINER: Yes.

16 MR. LAKE: - the lo- -- the specific location -

17 ZONING EXAMINER: Actually, if you could - that's
18 better.

19 MR. LAKE: Okay. I, I stated I want to make sure I
20 address the issues that you wanted us to discuss with the church.
21 I have a list of three. One is the specific location of the site
22 within the church property. Two is you would like to see
23 propagation maps at various levels. And three, maintenance of
24 the - installation, maintenance of the live, of the live palm

1 trees. There's currently a condition to approval on Staff,
2 Staff's recommendation. Anything else you'd like us to discuss
3 with the church?

4 ZONING EXAMINER: I want, not necessarily with the
5 church, but I'd also like to see if you can't give me further
6 information about whether a CMU wall - I know you didn't have any
7 objection to the CMU wall, but whether that would mitigate noise
8 concerns.

9 MR. LAKE: We, we were willing to do a CMU wall, we'll
10 do a chainlink fence. We'll do whatever works.

11 ZONING EXAMINER: And I wanted an opportunity to
12 respond to the lightning report, and to give your engineer an
13 opportunity to correct the record on the, on the, the map -

14 MR. LAKE: The labeling on the prop- -

15 ZONING EXAMINER: (Inaudible)

16 MR. LAKE: We'll give you correct prop. maps.

17 ZONING EXAMINER: Okay.

18 MR. LAKE: Thank you for your patience.

19 ZONING EXAMINER: Thank you. I, I think that the date
20 that we would have to come back would be June 9th.

21 (Multiple inaudible speakers.)

22 ZONING EXAMINER: That's a Sunday? I, I seeing as how
23 this has to - this would be a church issue, maybe we, maybe we
24 could do it on a Sunday. The, the 13th. That's less than 30

1 days. June 13th. Lucky 13.

2 Okay. So Case No. SE-12-94. Presidio Road C-1 Zone is
3 continued until June 13th. If you could leave your orange cards,
4 if you want a copy of the preliminary report, you can leave them
5 up there. And, Mr. Haberman, is that -

6 MR. HABERMAN: That's (inaudible)

7 ZONING EXAMINER: That's the information that you
8 wanted submitted into the record. Okay. We'll also try to
9 provide all the information that was submitted into the record
10 onto the Planning & Development Services website. People have
11 been very patient in waiting for the rest of the cases on the
12 agenda.

13 And what I'd like to do momentarily just take a two or
14 three-minute break. People can get some fresh air, go to the
15 bathroom, get a drink of water because it's already been a long
16 night. So let's take - let's come back at 8:50. Let's come back
17 and regroup for the next case.

18 (Case No. SE-12-94 was continued to June 13, 2013.)

I hereby certify that, to the best of my ability, the foregoing is a true and accurate transcription of the original tape recorded conversation in the case referenced on page 1 above.

Transcription Completed: 05/29/13



KATHLEEN R. KRASSOW - Owner
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